

THIS DISPOSITION IS NOT
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THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Herb's Seafood, Inc.

Serial Nos. 76496382, 76496383, 76496384,
and 76496385

Norman E. Lehrer for Herb's Seafood, Inc.

Katherine Stoides, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Hairston, Chapman and Walsh, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Herb's Seafood, Inc. has filed applications to
register the marks CHICKEN SNIPPETS¹ and RAINBOW CHICKEN
SNIPPETS² for "frozen prepared and breaded chicken"; and SEA

¹ Serial No. 76496382, filed on March 10, 2003, based on an
allegation of a bona fide intention to use the mark in commerce.
The word CHICKEN is disclaimed apart from the mark as shown.

² Serial No. 76496383, filed on March 10, 2003, based on an
allegation of a bona fide intention to use the mark in commerce.
The word CHICKEN is disclaimed apart from the mark as shown.

Ser No. 76496382; 76496383; 76496384; and 76496385

SNIPPETS³ and RAINBOW SEA SNIPPETS⁴ for "frozen prepared and breaded seafood."

In application Serial No. 76496382 applicant has appealed the trademark examining attorney's final refusal to register the mark CHICKEN SNIPPETS under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that as applied to the recited goods, the mark is merely descriptive of them.

In application Serial Nos. 76496383, 76496384, and 76496385 applicant has appealed the examining attorney's final requirement that applicant disclaim CHICKEN SNIPPETS and SNIPPETS, respectively, apart from the marks RAINBOW CHICKEN SNIPPETS, SEA SNIPPETS, and RAINBOW SEA SNIPPETS, and her final refusal to register these marks absent compliance with the final requirement for disclaimers. Section 6(a) of the Trademark Act, 15 U.S.C. §1056(a). The basis of the disclaimer requirement is the examining attorney's contention that CHICKEN SNIPPETS and SNIPPETS are merely descriptive of the recited goods.

³ Serial No. 76496384, filed on March 10, 2003, based on an allegation of a bona fide intention to use the mark in commerce.

⁴ Serial No. 76496385, filed on March 10, 2003, based on an allegation on a bona fide intention to use the mark in commerce.

Briefs have been filed, but an oral hearing was not requested. Because the underlying issue in each application is the same or similar, i.e., whether CHICKEN SNIPPETS/SNIPPETS is merely descriptive of the recited goods, the appeals have been treated in a single opinion.

Serial No. 76496382

The examining attorney asserts that the mark CHICKEN SNIPPETS, when applied to frozen prepared and breaded chicken, is merely descriptive of the nature of the goods because it immediately communicates that the goods are morsels or bite-size pieces of chicken. In this connection, the examining attorney submitted the following dictionary listing for the word "*snippet*":

1. A bit, scrap or morsel: "sparkling black bass... strewn with snippets of coriander and basil".

The American Heritage Dictionary of the English Language (3rd ed. 1992).

Applicant, in urging reversal of the refusal to register, argues that the word "snippet" has other meanings and the average consumer would not understand "snippet" to refer to a piece or portion of food. In this regard, applicant submitted dictionary listings which show that "snippet" also means "scraps or fragments of, for example,

knowledge or news;"⁵ "a small part, piece, or thing; especially: a brief quotable passage;"⁶ and "a small and often interesting piece of information or conversation."⁷ Further, applicant argues that thought and imagination are required in order to reach a conclusion as to the nature of the goods; that competitors do not need to use the term "snippets" to describe their goods; and that any doubt on the issue of descriptiveness should be resolved in applicant's favor.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. In re H.U.D.D.L.E.,

⁵ New Webster's Dictionary of the English Language.

⁶ Merriam-Webster Online Dictionary.

⁷ Cambridge Advanced Learner's Dictionary.

216 USPQ 358 (TTAB 1982); In Re MBAssociates, 180 USPQ 338 (TTAB 1973). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term is used or is intended to be used, and the impact that it is likely to make on the average purchaser of such goods or services; that a term may have other meanings in different contexts is not controlling. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

Applying these principles in the present case, we find that the mark applicant seeks to register, CHICKEN SNIPPETS, is merely descriptive of the goods identified in the application, "frozen prepared and breaded chicken." Obviously, the word CHICKEN is descriptive of the identified goods. Moreover, the word SNIPPETS has descriptive significance with respect to the identified goods. Foods such as chicken may be served in small or bite-size portions, and when the word SNIPPETS is considered in connection with frozen prepared and breaded chicken, it is the meaning of "[a] bit, scrap or morsel" that consumers will ascribe to the word, and not "a brief quotable passage;" "fragments of news," or "a small and

often interesting piece of information or conversation." In view thereof, we find that the mark CHICKEN SNIPPETS immediately describes a significant characteristic or feature of the goods, namely, that they are bits or morsels of chicken. No amount of imagination, cogitation, mental processing or gathering of further information is necessary in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the designation CHICKEN SNIPPETS as it pertains to applicant's goods.

With respect to applicant's contention that competitors do not need to use the term CHICKEN SNIPPETS to describe their goods, even if that is so, it does not negate the mere descriptiveness of applicant's mark, nor does it justify registration of the mark. See, e.g., *In re Officers' Organization For Economic Benefits, Limited*, 221 USPQ 184 (TTAB 1984).

In sum, we find that applicant's mark is merely descriptive of the goods identified in the application, and that the trademark examining attorney's refusal to register the mark is proper.

Serial Nos. 76496383, 76496384, and 76496385

As discussed above, the terms CHICKEN SNIPPETS and SNIPPETS are merely descriptive of frozen prepared and

Ser No. 76496382; 76496383; 76496384; and 76496385

breaded chicken. The word SNIPPETS is equally descriptive of frozen prepared and breaded seafood. Again, seafood may be served in small or bite-size portions and when the word SNIPPETS is used in connection with such goods, it is the meaning of "[a] bit, scrap or morsel" that consumers will ascribe to the word. Thus, the examining attorney's requirement for a disclaimer of CHICKEN SNIPPETS and SNIPPETS, respectively, in the above applications is proper.

Decision: In application Serial No. 76496382 the refusal to register under Section 2(e)(1) is affirmed.

In application Serial Nos. 76496383, 76496384, and 76496385 the refusals of registrations based on applicant's failure to disclaim CHICKEN SNIPPETS and SNIPPETS are affirmed. However, if applicant submits the required respective disclaimers within thirty days of this decision, the refusals of registration in Serial Nos. 76496383, 76496384, and 76496385 based on the disclaimer requirements will be set aside and those applications would be published for opposition. See Trademark Rule 2.142(g).